

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**LINWOOD MINING AND MINERALS
CORPORATION**

Facility ID# 82-01-015
Scott County, IA

ADMINISTRATIVE CONSENT ORDER
NO. 2008-AQ-56

TO: Jeff Dahl, VP- Chemical Operations
Linwood Mining and Minerals Corp.
401 East Front Street
Davenport, IA 52804

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Linwood Mining and Minerals Corporation (Linwood Mining) for the purpose of resolving air quality violations at its facility in Davenport, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Dennis Thielen, Air Quality
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-4899

Relating to legal requirements:

Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-6243

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules

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IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: LINWOOD MINING AND MINERALS CORPORATION

adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties, the DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. Linwood Mining is a limestone mining operation that produces a high quality product capable of being used for various chemical applications. After stone is extracted from the mine, it is transported to a primary crusher. Following the initial crushing process, the material is then sized and screened in accordance with customer specifications. Finally, Linwood Mining products are either stockpiled or transported to the chemical plants for further processing.

2. On May 8, 1998, DNR issued Construction Permit # 98-A-191-S1 to Linwood Mining for its facility located at 401 East Front Street, Davenport, Iowa 52728.

3. On February 4, 2004, DNR issued Title V permit # 04-TV-005 to Linwood Mining.

4. On January 16-18, 2006, Linwood conducted stack testing on Emission Point CC-4 (EP CC-4) to meet the periodic monitoring requirements of Title V permit # 04-TV-005.

5. On February 9, 2006, DNR received and reviewed the January 16-18, 2006 test report submitted by Linwood Mining. The testing showed that EP CC-4 was in violation of its 0.022 gr/dscf pm and 0.10 lbs/hr PM10 limits. The values found were 0.026 gr/dscf and 0.29 lbs/hr.

6. On February 16, 2006, DNR issued a Notice of Violation Letter to Linwood Mining for failure to test within permitted emission limits on EP CC-4. Linwood has asserted that on February 28, 2006, Linwood conducted an engineering test on EP-CC-4. Linwood further asserts that testing showed results to be in compliance with permitted emission limits. However, the performance testing asserted by Linwood was not observed by DNR personnel in compliance with 567 Iowa Administrative Code chapter 25.

7. On April 10, 2006, Linwood Mining retested EP CC-4.

8. On May 2, 2006, Linwood Mining submitted a test report for the April 10, 2006, retest. Results showed were within the permitted emission limits. The value found was 0.03 lbs./hr of PM10, and 0.003gr/dscf of particulate matter.

9. On July 14, 2006, Construction Permit # 86-A-049-S6 was issued for EP CC-2 to replace the baghouse and decrease PM10 allowable. The permit modification required Linwood to conduct emissions testing for PM and PM 10.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: LINWOOD MINING AND MINERALS CORPORATION

10. On December 11, 2006, emission testing was conducted for PM/PM10 for EP CC-2. EP CC-2 tested in violation of its 1.61 lb/hr limit. The value found was 2.08 lb/hr for PM/PM10.

11. On January, 23, 2007, DNR issued a Notice of Violation Letter to Linwood for failure to test below the permitted emissions limit on EP CC-2.

12. On February 26, 2007, EP CC-2 retested at 0.89 lb/hr of PM/PM10. Linwood has asserted that on February 15, 2007, Linwood sent a letter to DNR detailing the reason for its testing delays, extreme weather conditions and a planned system shutdown in March would make it difficult to maintain consistent production rates in order to conduct the required test.

13. On April 5 -27, 2007, EP CC-2 was retested.

14. On April 25, 2007, Linwood Mining submitted the test report for the April 5-7, 2007, testing. The values for EP CC-2 were 0.89 lbs.hr and 1% opacity. These results were in compliance with the permit limits.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-34 relating to air quality.

2. 567 IAC 22.3(3) provides that a construction permit may be issued subject to conditions which shall be specified in writing, and that such conditions may include compliance testing requirements. Linwood Mining failed to demonstrate compliance with construction permits # 98-A-191-S1 and # 86-A-049-S6:

a. Condition 9 of Construction permit 98-A-191-S1 for EP CC-4 includes emission limits for particulate matter and PM 10. The limit is set at 0.1 lb/hr by the State Implementation Plan (SIP) modeling in order for Linwood to meet the National Ambient Air Quality Standards (NAAQS). During the January 16-18, 2006 tests, Linwood Mining failed to demonstrate compliance with the permitted emission limits for particulate matter and PM 10 stated in Condition 9. EP CC-4 was tested at 0.29 lbs/hr, in violation of its 0.1 lbs/hr PM10 limit. In addition, EP CC-4 tested at 0.026 gr/dscf. This violates 40 CFR Part 60, subpart OOO, which requires EP CC-4 to contain no more than 0.05 grams/dscm (0.022 gr/dscf) of particulate matter. The above-mentioned facts demonstrate a violation of this provision.

b. Condition 10 of Construction permit 86-A-049-S6 for EP CC2 includes emission limits for particulate matter and PM10. The limit is set at 1.61 lb/hr in order to avoid Prevention of Significant Deterioration (PSD) applicability, and to comply

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: LINWOOD MINING AND MINERALS CORPORATION

with NAAQS requirements. On December 11, 2006, Linwood Mining failed to demonstrate compliance with the permitted emission limits for particulate matter and PM 10 stated in Condition 10.EP CC-2 tested in violation of its 1.61 lb/hr limit. The above-mentioned facts demonstrate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders and the Linwood Mining agrees to do the following:

1. Submit a facility operation and management plan as required in Title V permit # 04-TV-005 to DNR for approval within 45 days of the date from which the Director signs this administrative consent order.
2. Pay a penalty of ^{ML} \$5,000.00 within 30 days of the date from which the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for each of the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A.
2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$5,000.00. The administrative penalty is determined as follows:

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has determined at this time the most equitable and efficient means of resolving the matter is through an administrative consent order. By failing to comply with the Construction and Title V permit limits, Linwood caused excess PM10 emissions. Excess emissions may contribute to adverse health impacts in the area. These limits were set to be protective of the NAAQS. Linwood Mining failed to test below emission standards on two sources. The violation on EP CC-4 was 170% of the emission limit. For these reasons, \$3,000.00 should be assessed.

Culpability – Linwood Mining has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: LINWOOD MINING AND MINERALS CORPORATION


Linwood Mining was out of compliance for approximately 90 days on EP CC-4, and approximately 60 days for EP CC-2. A proper facility operation and maintenance plan on EP CC-4 could have avoided non-compliance with the emission point limit. For these reasons, \$2,000.00 should be assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Linwood Mining. For that reason Linwood Mining waives its rights to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order. DNR reserves the right to bring enforcement action, including penalties, or to request that the attorney general initiate legal action to address other violations not described in Section "IV. Conclusions of Law" of this administrative consent order but which may arise from the facts summarized in Section "III. Statement of Facts" of this administrative consent order. DNR specifically reserves the right to pursue enforcement action, including penalties, for any current violations not specifically cited in this administrative consent order.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 10 day of
Dec, 2008.



AUTHORIZED AGENT
Linwood Mining and Minerals Corp.

Dated this 9th day of
December, 2008.

Facility # 82-01-015; Anne Preziosi Air Quality; Dennis Thielen; VII.B.2.c.1